

EXECUTION

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE TESLA, INC. SECURITIES
LITIGATION

Case No. 3:18-cv-04865-EMC

CLASS ACTION

**STIPULATED ~~PROPOSED~~
PROTECTIVE ORDER**

EXECUTION

1 This Stipulated Protective Order (“Order”) is meant to govern the use of, and protect from
 2 public disclosure, any non-public and confidential or proprietary or private information used or
 3 disclosed in this litigation.

4 **1. PURPOSES AND LIMITATIONS**

5 Disclosure and discovery activity in this action are likely to involve production of
 6 confidential, proprietary, or private information for which special protection from public
 7 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 8 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 9 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 10 all disclosures or responses to discovery and that the protection it affords from public disclosure
 11 and use extends only to the limited information or items that are entitled to confidential treatment
 12 under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3,
 13 below, that this Stipulated Protective Order does not entitle them to file confidential information
 14 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
 15 that will be applied when a party seeks permission from the court to file material under seal.

16 **2. DEFINITIONS**

17 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 18 information or items under this Order.

19 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is
 20 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
 21 of Civil Procedure 26(c) and other proprietary or private information warranting special
 22 protection from public disclosure and from use for purposes other than prosecuting this litigation.

23 2.3 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel (as
 24 well as their support staff).

25 2.4 Designating Party: a Party or Non-Party that designates information or items
 26 produced in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 27 CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

28 2.5 Disclosure or Discovery Material: all items or information, regardless of the

1 medium or manner in which it is generated, stored, or maintained (including, among other things,
2 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
3 responses to discovery in this matter.

4 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
5 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or
6 as a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
7 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party
8 or of a Party's competitor.

9 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
10 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
11 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
12 less restrictive means.

13 2.8 In-House Counsel: attorneys who are employees of a party to this action. In-House
14 Counsel does not include Outside Counsel of Record or any other outside counsel.

15 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
18 action but are retained to represent or advise a party to this action and have appeared in this action
19 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

20 2.11 Party: any party to this action, including all of its officers, directors, employees,
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
23 Material in this action.

24 2.13 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
26 organizing, storing, or retrieving data in any form or medium) and their employees and
27 subcontractors.

28 2.14 Protected Material: any Disclosure or Discovery Material that is designated as

1 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
3 Producing Party.

4 **3. SCOPE**

5 The protections conferred by this Stipulation and Order cover not only Protected Material
6 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
7 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
8 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
9 However, the protections conferred by this Stipulation and Order do not cover the following
10 information: (a) any information that is in the public domain at the time of disclosure to a
11 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as
12 a result of publication not involving a violation of this Order, including becoming part of the
13 public record through trial or otherwise; and (b) any information known to the Receiving Party
14 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who
15 obtained the information lawfully and under no obligation of confidentiality to the Designating
16 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

17 **4. DURATION**

18 Even after final disposition of this litigation, the confidentiality obligations imposed by
19 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court
20 order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all
21 claims and defenses in this action, with or without prejudice; and (2) final judgment herein after
22 the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
23 including the time limits for filing any motions or applications for extension of time pursuant to
24 applicable law.

25 **5. DESIGNATING PROTECTED MATERIAL**

26 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
27 or Non-Party that designates information or items for protection under this Order must take care
28 to limit any such designation to specific material that qualifies under the appropriate standards.

1 To the extent it is practical to do so, the Designating Party must designate for protection only
2 those parts of material, documents, items, or oral or written communications that qualify – so that
3 other portions of the material, documents, items, or communications for which protection is not
4 warranted are not swept unjustifiably within the ambit of this Order.

5 Mass, indiscriminate, or routinized designations are generally prohibited. Designations
6 that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
7 unnecessarily encumber or retard the case development process or to impose unnecessary
8 expenses and burdens on other parties) expose the Designating Party to sanctions.

9 If it comes to a Designating Party's attention that information or items that it designated
10 for protection do not qualify for protection at all or do not qualify for the level of protection
11 initially asserted, that Designating Party must promptly notify all other Parties that it is
12 withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
14 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
15 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
16 designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but
19 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
20 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
21 ONLY" to each page that contains protected material. To the extent it is practicable to do so, if
22 only a portion or portions of the material on a page qualifies for protection, the Producing Party
23 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the
24 margins) and must specify, for each portion, the level of protection being asserted.

25 A Party or Non-Party that makes original documents or materials available for inspection
26 need not designate them for protection until after the inspecting Party has indicated which material
27 it would like copied and produced. During the inspection and before the designation, all of the
28 material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL –

1 ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants
 2 copied and produced, the Producing Party must determine which documents, or portions thereof,
 3 qualify for protection under this Order. Then, before producing the specified documents, the
 4 Producing Party must affix the appropriate legend ("CONFIDENTIAL" or "HIGHLY
 5 CONFIDENTIAL – ATTORNEYS' EYES ONLY") to each page that contains Protected
 6 Material. If only a portion or portions of the material on a page qualifies for protection, the
 7 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
 8 markings in the margins) and must specify, for each portion, the level of protection being asserted.

9 (b) for testimony given in deposition or in other pretrial or trial proceedings, that
 10 the Designating Party identify on the record, before the close of the deposition, hearing, or other
 11 proceeding, all protected testimony and specify the level of protection being asserted. When it is
 12 impractical to identify separately each portion of testimony that is entitled to protection, a Party
 13 or the Designating Party may invoke on the record (before the deposition, hearing, or other
 14 proceeding is concluded) a right to have up to 30 days after receipt of the transcript of the
 15 testimony in which to identify the specific portions of the testimony as to which protection is
 16 sought and to specify the level of protection being asserted. Only those portions of the testimony
 17 that are appropriately designated for protection within the 30 days shall be covered by the
 18 provisions of this Order. Alternatively, a Designating Party may specify, at the deposition or up
 19 to 30 days after receipt of the transcript of the testimony, if that right is properly invoked, that the
 20 entire transcript shall be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
 21 ATTORNEYS' EYES ONLY."

22 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
 23 or other proceeding to include Protected Material so that the other parties can ensure that only
 24 authorized individuals who have signed the "Acknowledgment and Agreement to Be Bound"
 25 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 26 shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL
 27 – ATTORNEYS' EYES ONLY."

28 Transcripts containing Protected Material shall have an obvious legend on the title page

1 that the transcript contains Protected Material, and the title page shall be followed by a list of all
 2 pages (including line numbers as appropriate) that have been designated as Protected Material
 3 and the level of protection being asserted by the Designating Party. The Designating Party shall
 4 inform the court reporter of these requirements. Any transcript that is prepared before the
 5 expiration of the 30-day period for designation shall be treated during that period as if it had been
 6 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
 7 otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually
 8 designated.

9 (c) for information produced in some form other than documentary and for any
 10 other tangible items, that the Producing Party affix in a prominent place on the exterior of the
 11 container or containers in which the information or item is stored the legend “CONFIDENTIAL”
 12 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions
 13 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
 14 identify the protected portion(s) and specify the level of protection being asserted.

15 (d) for information requiring production in native or non-documentary electronic
 16 form (*e.g.*, a database): by its nature, certain electronic information is impracticable to designate
 17 for confidentiality on a document or item by item basis. In such instances, the producing Party
 18 shall therefore affix in a prominent place on the exterior of the container or containers within
 19 which the electronic information is stored or transmitted (*e.g.*, a physical CD-ROM or hard disk
 20 drive) the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
 21 ONLY.” The Receiving Party shall mark any documents it prints from such designated files
 22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” – as
 23 designated - and treat them as such, in accordance with the provisions of this Order.

24 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 25 designate qualified information or items does not, standing alone, waive the Designating Party’s
 26 right to secure protection under this Order for such material. Upon timely correction of a
 27 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 28 in accordance with the provisions of this Order.

1 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
3 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality
4 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
5 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
6 challenge a confidentiality designation by electing not to mount a challenge promptly after the
7 original designation is disclosed.

8 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
9 process by providing written notice (which may be accomplished via email) of each designation
10 it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a
11 challenge has been made, the written notice must recite that the challenge to confidentiality is
12 being made in accordance with this specific paragraph of the Order. The parties shall attempt to
13 resolve each challenge in good faith and must begin the process by conferring directly (in voice
14 to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of
15 service of notice. In conferring, the Challenging Party must explain the basis for its belief that the
16 confidentiality designation was not proper and must give the Designating Party an opportunity to
17 review the designated material, to reconsider the circumstances, and, if no change in designation
18 is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to
19 the next stage of the challenge process only if it has engaged in this meet and confer process first
20 or establishes that the Designating Party is unwilling to participate in the meet and confer process
21 in a timely manner.

22 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
23 intervention, and the Challenging Party still seeks to pursue a challenge to a confidentiality
24 designation after considering the justification offered by the Designating Party, the Challenging
25 Party shall serve written notice (which may be accomplished via email), in accordance with this
26 specific paragraph of the Order, identifying for the Designating Party the specific material that
27 remains subject to the challenge. The Designating Party shall file and serve a motion to retain
28 confidentiality under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if

applicable) within 21 days of receiving such notice or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier.¹ Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to make such a motion including the required declaration within 21 days of notice (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion challenging a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to file a motion to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and

¹ After three challenges, the burden to move is on the Challenging party to avoid an abuse of the process. The burden of persuasion remains on the Designating Party.

1 in a secure manner² that ensures that access is limited to the persons authorized under this Order.

2 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
3 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
4 information or item designated “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
7 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
8 Bound” that is attached hereto as Exhibit A;

9 (b) the officers, directors, and employees (including In-House Counsel) of the
10 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
11 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

12 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
13 reasonably necessary for this litigation and who have signed the “Acknowledgment and
14 Agreement to Be Bound” (Exhibit A);

15 (d) the court and its personnel;

16 (e) court reporters and their staff, professional jury or trial consultants, and
17 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
18 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

19 (f) during their depositions, witnesses in the action to whom disclosure is
20 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”
21 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of
22 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
23 separately bound by the court reporter and may not be disclosed to anyone except as permitted
24 under this Order; and

25 (g) the author or recipient of a document containing the information or a custodian
26 or other person who otherwise possessed or knew the information.

27
28 ² It may be appropriate under certain circumstances to require the Receiving Party to store any
electronic Protected Material in password-protected form.

1 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
 2 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
 3 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
 4 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

5 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
 6 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 7 information for this litigation and who have signed the “Acknowledgment and Agreement to Be
 8 Bound” that is attached hereto as Exhibit A;

9 (b) Designated In-House Counsel of the Receiving Party (1) who has no
 10 involvement in competitive decision-making, (2) to whom disclosure is reasonably necessary for
 11 this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 12 A), and (4) as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been followed;

13 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary
 14 for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound”
 15 (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been
 16 followed;

17 (d) the court and its personnel;

18 (e) court reporters and their staff, professional jury or trial consultants, and
 19 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
 20 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

21 (f) the author or recipient of a document containing the information or a custodian
 22 or other person who otherwise possessed or knew the information.

23 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL
 24 – ATTORNEYS’ EYES ONLY” Information or Items to Designated In-House Counsel or
 25 Experts.

26 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the
 27 Designating Party, a Party that seeks to disclose to Designated In-House Counsel any information
 28 or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”

pursuant to paragraph 7.3(b) first must make a written request to the Designating Party (which may be accomplished via email) that (1) sets forth the full name of the Designated In-House Counsel and the city and state of his or her residence, and (2) describes the Designated In-House Counsel's current and reasonably foreseeable future primary job duties and responsibilities in sufficient detail to determine if In-House Counsel is involved, or may become involved, in any competitive decision-making.

(a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" pursuant to paragraph 7.3(c) first must make a written request to the Designating Party (which may be accomplished via email) that (1) identifies the general categories of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information that the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary residence, (3) attaches a copy of the Expert's current resume, (4) identifies the Expert's current employer(s), (5) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years, and (6) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.³

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection (which may be accomplished via email) from the Designating Party.

³ It may be appropriate in certain circumstances to restrict the Expert from undertaking certain limited work prior to the termination of the litigation that could foreseeably result in an improper use of the Designating Party's "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information.

1 Any such objection must set forth in detail the grounds on which it is based.

2 (c) A Party that receives a timely written objection must meet and confer with the
 3 Designating Party (through direct voice to voice dialogue, other forms of communication are not
 4 sufficient) to try to resolve the matter by agreement within seven days of the written objection. If
 5 no agreement is reached, the Party seeking to make the disclosure to Designated In-House
 6 Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
 7 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
 8 motion must describe the circumstances with specificity, set forth in detail the reasons why the
 9 disclosure to Designated In-House Counsel or the Expert is reasonably necessary, assess the risk
 10 of harm that the disclosure would entail, and suggest any additional means that could be used to
 11 reduce that risk. In addition, any such motion must be accompanied by a competent declaration
 12 describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content
 13 of the meet and confer discussions) and setting forth the reasons advanced by the Designating
 14 Party for its refusal to approve the disclosure.

15 In any such proceeding, the Party opposing disclosure to Designated In-House Counsel or
 16 the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail
 17 (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected
 18 Material to its Designated In-House Counsel or Expert.

19 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
 20 **OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation that
 22 compels disclosure of any information or items designated in this action as "CONFIDENTIAL"
 23 or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" that Party must:

24 (a) promptly notify in writing (by email, with receipt confirmed) the Designating
 25 Party. Such notification shall include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or order to issue
 27 in the other litigation that some or all of the material covered by the subpoena or order is subject
 28 to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.⁴

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of this Order, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

⁴ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.⁵ Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

If Discovery Material or other information subject to a claim of attorney-client privilege, work-product immunity, or any other applicable claim of privilege or immunity is inadvertently produced or otherwise disclosed to any Party or Non-Party, such production or disclosure shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or immunity for such Discovery Material or other information. Discovery Material or other information subject to a claim of privilege or immunity must be returned as soon as it is discovered, without any need to show the production was inadvertent. The Receiving Party shall not use the inadvertently produced Discovery Material or other information for any purpose other than in connection with a motion to compel production in this matter.

⁵ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 Upon request by the Producing Party pursuant to this Section, the Receiving Party shall
2 immediately return all copies of such document(s) or thing(s) and shall destroy any newly created
3 derivative document such as a summary or comment on the inadvertently produced information.
4 The Receiving Party may then move the court for an order compelling production of such
5 information, but the motion shall not assert as a ground for production the fact or circumstances
6 of the inadvertent production. If a claim is disputed, the Receiving Party shall not use or disclose
7 any Discovery Material or other information for which a claim of privilege or immunity is made
8 pursuant to this Section for any purpose or until the matter is resolved by agreement of the parties
9 or by a decision of the court.

10 **12. MISCELLANEOUS**

11 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
12 seek its modification by the court in the future.

13 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
14 Order no Party waives any right it otherwise would have to object to disclosing or producing any
15 information or item on any ground not addressed in this Order. Similarly, no Party waives any
16 right to object on any ground to use in evidence of any of the material covered by this Order.

17 12.3 Filing Protected Material. Without written permission from the Designating Party
18 or a court order secured after appropriate notice to all interested persons, a Party may not file in
19 the public record in this action any Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
21 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
22 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
23 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
24 to protection under the law. If a Receiving Party's request to file Protected Material under seal
25 pursuant to Civil Local Rule 79-5(e) (concerning documents or information designated as
26 confidential by another Party or Non-Party) is denied by the court, then the Receiving Party may
27 file the Protected Material in the public record in accordance with Civil Local Rule 79-5(e)(2)
28 unless otherwise instructed by the court.

1 **13. FINAL DISPOSITION**

2 Within 60 days after the final disposition of this action, as defined in Section 4
 3 (DURATION), each Receiving Party must return all Protected Material to the Producing Party or
 4 destroy such material. As used in this subdivision, "all Protected Material" includes all copies,
 5 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
 6 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
 7 must submit a written certification to the Producing Party (and, if not the same person or entity,
 8 to the Designating Party) by the 60-day deadline that (1) identifies (by category, where
 9 appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the
 10 Receiving Party has not retained any copies, abstracts, compilations, summaries or any other
 11 format reproducing or capturing any of the Protected Material. Notwithstanding this provision,
 12 Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition,
 13 and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
 14 reports, attorney work product, and consultant and expert work product, even if such materials
 15 contain Protected Material. Any such archival copies that contain or constitute Protected Material
 16 remain subject to this Protective Order as set forth in Section 4 (DURATION).

17 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

18 Dated: May 19, 2020

LEVI & KORSINSKY, LLP

19 By: /s/ Adam M. Apton

20 Adam M. Apton (CSB No. 316506)
 21 Adam C. McCall (CSB No. 302130)
 22 388 Market Street, Suite 1300
 23 San Francisco, CA 94111
 Telephone: (415) 373-1671
 Facsimile: (415) 484-1294

24 Nicholas I. Porritt (admitted *pro hac vice*)
 25 1101 30th Street NW, Suite 115
 Washington, D.C. 20007
 Telephone: (202) 524-4290
 Facsimile: (202) 337-1567

26 *Attorneys for Lead Plaintiff Glen Littleton and*
 27 *Lead Counsel for the Class*
 28

1
2 Dated: May 19, 2020

FENWICK & WEST LLP

3 By: /s/ Jennifer C. Bretan
4 Jennifer C. Bretan

5 555 California Street, 12th Floor
6 San Francisco, California 94104
7 Telephone: (415) 875-2300
8 Facsimile: (415) 281-1350

9 *Attorneys for Defendants Tesla, Inc., Elon Musk,*
10 *Brad W. Buss, Robyn Denholm, Ira Ehrenpreis,*
11 *Antonio J. Gracias, James Murdoch, Kimbal Musk,*
12 *and Linda Johnson Rice*

13 Pursuant to Civil Local Rule No. 5-1(i)(3), all signatories concur in filing this Stipulated
14 ~~Proposed~~ Protective Order.

15 Dated: May 19, 2020

16 By: /s/ Adam M. Apton
17 Adam M. Apton

18 ***

19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

20 DATED: May 20, 2020

21 

22 Hon. Edward M. Chen
23 United States District Judge
24
25
26
27
28

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury that I have
 read in its entirety and understand the Stipulated Protective Order that was issued by the United
 States District Court for the Northern District of California on _____, 2020 in the
 case of *In re Tesla, Inc. Securities Litigation*, Case No. 3:18-cv-04865-EMC (the "Order"). I
 agree to comply with and to be bound by all the terms of the Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
 of contempt. I solemnly promise that I will not disclose in any manner any information or item
 that is subject to the Order to any person or entity except in strict compliance with the provisions
 of this Order.

I further agree to submit to the jurisdiction of the United States District Court for
 the Northern District of California for the purpose of enforcing the terms of the Order, even if
 such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of the Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]